

ENFORCEABLE UNDERTAKING

Article 89, Regulatory Law (DIFC Law No. 1 of 2004, as amended, DIFC Law No. 7 of 2006)

This Enforceable Undertaking is made under and for the purposes described in Article 89 of the *Regulatory Law 2004* (*“the Regulatory Law”*). The Dubai Financial Services Authority (“DFSA”) accepts this Enforceable Undertaking from Stephen Cheung GA KIN (“GA KIN”).

Recital of Facts

This Enforceable Undertaking is based on the admission of the following facts:

1. GFS Investments (Middle East) Limited (“GFS”) is a wholly owned subsidiary of GFS Forex and Futures Inc (“GFS Inc”) and was licensed by the DFSA on 17 May 2007 as a Category 4 Authorised Firm.
2. Under its license GFS is Authorised to arrange credit or deals in Investments and advise on Financial Products or credit in respect of Options or Futures. GFS is not authorised to Deal in Investments as Agent or deal with customers who are not Clients as defined in the DFSA Rulebook, Conduct of Business Module.¹
3. GA KIN is a Licensed Director of GFS having held this position since GFS’s Licensed and Authorised.
4. In addition to GA KIN’s duties as a Licensed Director, his duties also included assisting the Finance Director in the financial management of the GFS business, by developing organisational and financial plans. GA KIN was not directly involved with the day to day operations of GFS or its sales and marketing activities.
5. Customers were introduced to GFS by employees known as Business Associates who facilitated access, by customers, to an online foreign

¹ Conduct of Business Rules 3.2.1.(1) and (2) COB/VER13/12-07)



currency trading platform offered by GFS Inc. These customers were not Clients.

6. When introducing a number of customers, the Business Associates knowingly recorded incorrect particulars of customers' current net worth, liquid assets and financial experience in their Customer Account Applications.
7. Business Associates also conducted trading on the GFS Inc platform on behalf of some customers when not authorised by the DFSA to do so.
8. The trading was in a number of instances unsuitable and not made in the best interests of the customers. The trading was characterised by the high number and frequency of transactions and resulted in high commissions and fees being paid by customers.
9. A number of GFS customers suffered losses as a result of the unauthorised trading conducted by GFS Business Associates.

Areas of Concerns

GA KIN acknowledges the following concerns of the DFSA about his conduct as an Authorised Individual of GFS:

10. The DFSA is concerned that GA KIN contravened Article 85 of the Regulatory Law, by failing to do an act or thing that a person is required to do, namely comply with the following Principles for Authorised Individuals as set out in the General Module of the DFSA Rulebook.

Principle 2 - Due skill, care and diligence,

Principle 5 - Management, Systems and Controls and

Principle 6 - Compliance.

- a. While GA KIN was an Authorised Individual of GFS:



- i. GFS provided Financial Services to GFS customers who did not qualify as Clients²;
- ii. Business Associates traded on behalf of GFS customers³; and
- iii. certain Business Associates employed by GFS were not fit and proper, competent and adequately trained in the legislation applicable in the DIFC⁴.

and therefore GA KIN:

- iv. failed to act with due skill, care and diligence;
- v. failed to take reasonable care to ensure that the business of GFS was organised so that it can be managed and controlled effectively; and
- vi. failed to take reasonable care to ensure that the business of GFS complied with any legislation applicable in the DIFC.

Terms and Conditions of Undertaking

The terms and conditions of this Enforceable Undertaking are as follows:

11. GA KIN undertakes to refrain for a period of five years from the date of this undertaking, from performing any function in or in connection with the provision of Financial Services or Ancillary Services in or from the Dubai International Financial Centre.
12. GA KIN undertakes to pay a sum of USD\$5000 to the DFSA within 30 days from the date of this Enforceable Undertaking.
13. GA KIN undertakes not to disclose to any person, apart from his legal advisor for the purpose of obtaining legal advice, any details of this undertaking until otherwise advised in writing by the DFSA save as

² In breach of COB 3.2.1 (COB/VER13/12-07)

³ In breach of Article 41(1)

⁴ GEN 5.3.19(1)



otherwise required by the legislation, rules and regulations of any other financial services regulator.

Remedies for Breach of Undertaking

14. Should GA KIN fail to satisfy the terms and conditions of this Enforceable Undertaking as determined by the DFSA, in its sole discretion, the DFSA reserves the right to pursue any remedy available to it in law without further notice, including but not limited to those listed in Article 89(4) of the *Regulatory Law*.

Acknowledgements

15. The facts as set out in this undertaking are without prejudice to the DFSA or GA KIN in any other proceedings including, without limitation, any civil, administrative or criminal actions or proceedings that may be brought by any other person or agency. GA KIN does not acknowledge any liability with respect to matters raised herein except solely to the extent of the undertakings set out in paragraphs 11 to 14 above.

16. This undertaking does not affect the DFSA's power to investigate or take further action in relation to any other concerns not the subject of the facts as recited above, or arising from future conduct.

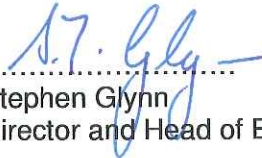
17. The DFSA may issue a media release on execution of this undertaking referring to its terms and the concerns of the DFSA that led to its execution. Further the DFSA may make this undertaking available for public inspection.




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Stephen Cheung Ga Kin

4th Sept. 2008
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Date

Accepted by the Dubai Financial Services Authority under Article 89 of the Regulatory Law by its authorised delegate:


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Stephen Glynn
Director and Head of Enforcement, DFSA

07.09.08
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Date

